APPEAL NO. 93126

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (vernon Supp. 1993) (1989 Act). On January 26, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues framed at the CCH were: 1. whether claimant, Mr I, sustained a compensable injury in the course and scope of his employment with (employer) on (date of injury); and 2. whether claimant reported his alleged injury of (date of injury) to his employer within 30 days. The hearing officer determined that the appellant, claimant, did not sustain a hearing loss injury in the course and scope of his employment on or about (date of injury), but that claimant timely reported his alleged hearing loss injury to his employer. Claimant contends that the hearing officer erred and his injury is work related and requests that we reverse the hearing officer's decision and grant him another hearing. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Claimant testified that he was a sales representative for the employer on (date of injury). According to the claimant, on about 15 occasions on (date of injury), while claimant had an ear to the receiver of his telephone there were loud noises on the telephone. Claimant explains he suffered hearing loss in both ears because he was alternating ears while using the telephone. Claimant alleges these loud noises on July 14th caused the hearing loss in both ears. Claimant testified he now has a "chirping" sound in both ears and a high frequency hearing loss. Claimant states that before July 14th he had some ringing noise from loud sounds but they would go away. Claimant asserts he notified his supervisor, (Mr. H) of the loud sounds and resultant hearing loss on July 14th and 15th, however, this is denied by Mr. H. Claimant submitted a statement, dated January 24, 1993, from a friend and coworker, to the effect that claimant did not have hearing problems before July 14th, but after the incident claimant ". . . couldn't hear his phone or door bell." An Employee's Notice of Injury (TWCC-41) completed by claimant was received by the Texas Workers' Compensation Commission (Commission) on July 27, 1992. Claimant states he completed another TWCC-41, giving slightly different information in September 1992, because upon inquiry with the Commission, he believed the original TWCC-41 had been lost (it had been sent to Austin but there was no evidence the carrier was ever advised of the claim by the Commission). Claimant apparently left the employer's employment shortly after July 15th with claimant's last paycheck being July 24, 1992. The bulk of the CCH dealt with notice or lack thereof.

The medical evidence consists of an audiological evaluation dated September 16, 1992, which indicates claimant has high tone sensorineural hearing loss bilaterally. In a note dated October 15, 1992, Dr. E, an otolaryngologist, reports claimant ". . . was seen on September 16, 1992 complaining of difficulty hearing for several months. Examination

revealed a severe mid and high tone sensorineural hearing loss bilaterally." In an Initial Medical Report (TWCC-61) dated October 20, 1992, Dr. E reports in the history; "[c]laims telephone system not working properly and he heard a loud bang in his left ear. He claims that he has difficulty hearing since this incident."

The hearing officer found that claimant reported to his supervisor on July 15, 1992 that a loud noise claimant had experienced on (date of injury) had caused him hearing problems. The hearing officer however also found that claimant "did not sustain a hearing loss injury caused by being subjected to loud noises transmitted through a telephone receiver." The hearing officer in his discussion commented "[t]here was no evidence produced that hearing a loud noise over the telephone with one ear would cause bilateral hearing loss or that the receiver of a telephone is capable of producing a sound loud enough to cause hearing loss." Claimant argues that the "sworn statement" of his friend and coworker ". . . proves that my nerve damage was suffered at work." Claimant asks for another hearing so he could ". . . bring a doctor in to prove this was cause (sic) by the telephone."

The hearing officer found the issue of notice in favor of the claimant but found that claimant had failed to establish causation between any loud noises he may have heard on the telephone with his bilateral hearing loss. The hearing officer is the sole judge of the weight and the credibility to be given to the evidence. *See* Article 8308-6.34(e). The hearing officer clearly considered claimant's testimony that there were at least 15 loud noises and that claimant shifted the telephone from ear to ear as accounting for the fact he has bilateral hearing loss. Contrary to claimant's allegations that his coworker's statement "proves [claimant's] nerve damage was suffered at work" the hearing officer obviously considered the statement anecdotal that claimant could hear better before July 14th than he could afterward. This falls short of establishing that a loud noise on the telephone can cause bilateral high tone hearing loss. In Hernandez v. T.E.I.A., 783 S.W.2d 250 (Tex. Civ. App.- Corpus Christi 1989, no writ) the court held that generally lay testimony is sufficient to establish a causal connection where, based upon common knowledge, the fact finder could understand a causal connection between the employment and the injury. In the present case the hearing officer's common knowledge was that it was unlikely that a loud noise over the phone, even repeated several times, could cause severe high tone hearing loss. Claimant asks for an opportunity "to bring a doctor in to prove this was cause (sic) by the telephone." We would note that was the purpose of the CCH, and as the hearing officer found, the claimant failed to show that the loud noise(s) caused his hearing problems. Where, as here, there is sufficient evidence to support the hearing officer's determinations, there is no sound basis to disturb his decision. Only if we were to determine, which we do not in this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust would we be warranted in setting aside his decision. In re King's Estate, 244 S.W.2d 660 (tex. 1951); Pool v. Ford Motor Co., 715 S.W.2d 692 (Tex. 1986); Texas Workers' Compensation

Commission Appeal No. 92232, decided July 21, 1992.

The decision of the hearing officer is affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Susan M. Kelley
Appeals Judge